

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on March 11, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Marti Crow- excused
Representative Dean Newton- excused
Representative Michael O'Neal- excused
Representative Dan Williams- excused

Committee staff present:

Jill Wolters, Revisor of Statutes
Diana Lee, Revisor of Statutes
Jerry Ann Donaldson, Kansas Legislative Research Department
Cindy O'Neal, Secretary

Conferees appearing before the committee:

Louis Wade, Kansas Credit Attorney's Association

The hearing on **SB 423 - wage garnishment; assignment of accounts**, was opened.

Louis Wade, Kansas Credit Attorney's Association, appeared as a proponent to the bill. Current law imposes an unreasonable restriction on commerce. Most consumer finance transactions are assigned to a third party, and without wage garnishment provisions these debts escape repayment. The proposed bill would repeal those provisions which prohibits wage garnishments for assigned accounts. It does retain child support as a priority. It should be the policy in Kansas that debts that are incurred are paid off. (Attachment 1)

The hearing on **SB 423** was closed.

The committee meeting adjourned. The next meeting was scheduled for March 15, 2004.

Testimony of Louis J. Wade
Kansas Credit Attorney's Association
Supporting Senate Bill 423
March 11, 2004

Chairman O'Neal, and members of the House Judiciary Committee,

Thank you for the opportunity to speak with you in support of SB 423, which proposes to repeal K.S.A. § 60-2310(d).

I am an attorney, and have practiced for more than 20 years. My career has always focused on representation of creditors. I am currently a member of the bankruptcy and creditor's rights section of my firm. I am a member and past-president of the Kansas Credit Attorney's Association ("KCAA"). Like other members of KCAA, I devote most of my legal practice to helping individuals and businesses receive payment for the goods and services they provide.

Under current law, K.S.A. § 60-2310(d) imposes an unreasonable restriction on commerce. Today, virtually all consumer finance transactions ("paper") are assigned. For example, when a consumer purchases furniture at a store, an automobile at a dealership, or signs a mortgage, the original seller frequently sells (or assigns) the right to receive payment to a third party lender or finance company. Without wage garnishment, these debts often escape repayment. In order to assure the continued free flow of commerce, and to help keep the cost of goods and services as well as the cost of credit low to Kansas consumers, those who purchase paper must be able to obtain payment. Current law unfairly restricts that right.

As far as I am aware, Kansas is the only state in the union to impose a limitation on wage garnishment based on who is entitled to receive payment. The ownership of the account does not affect the rights of the consumer to assert defenses (FTC Holder Rule), nor does it affect the amount the consumer agreed to pay.

The current statutory limitation on wage garnishment only applies after a court has entered judgment. The creditor, a collection agency and an attorney all typically make multiple written and telephone efforts to resolve an account without suit. Only after all those efforts have failed will a suit be filed. At that time, due process requires notice and an opportunity to the consumer to contest the debt. Only after default, consent or court determination, with due process safeguards, may the creditor use wage garnishment. There exists no good reason to disallow a judgment creditor from using the same means to collect a just and lawful debt as any other creditor, simply because the judgment creditor was not also the seller.

The current limitation against use of wage garnishment for assigned accounts is bad policy for the State of Kansas. Another portion of the statute, K.S.A. § 60-2310(c) protects a judgment debtor who suffers from sickness preventing work. That provision is

sensible, rational, and good policy to prevent extra harm to a judgment debtor who has suffered illness. On the other hand, the limitation imposed in Subsection (d) does not make sense. The judgment debt is valid and the amount is owed. The amount due does not vary based on ownership of the underlying paper. The debtor obtained goods and/or services in return for the promise of payment, and failed to pay. The better policy for Kansas would be to require payment of just and lawful debts.

Interestingly, the owner of an account or debt by assignment is free to use bank garnishment under current law. That remedy can pose a much more drastic and harmful remedy to the judgment debtor because the entire account is frozen, and may be taken in payment of the judgment. Checks may bounce. On the other hand, with wage garnishment there is a 25% limitation, providing some protection to the judgment debtor, and at the same time allowing the creditor to receive some payment.

The repeal of K.S.A. § 60-2310(d) as proposed under SB 423 would also be compatible with the purposes of SB 298. By allowing wage garnishment for assigned accounts, additional funds may be generated for funding the courts.

The judgment debtor is protected from abuse or improper action by other laws, obviating the need for the protection under K.S.A. § 60-2310(d). The rules of civil procedure, the Fair Debt Collection Practices Act and the Kansas Consumer Protection Act are examples of legislation providing that protection.

In conclusion, I respectfully urge the committee to pass SB 423. Thank you. I would be happy to answer any questions.